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14  
15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA  
17 SAN JOSE DIVISION

18 NATIONAL UNION FIRE INSURANCE  
19 COMPANY OF PITTSBURGH,

20 Plaintiff,

21 v.

22 RESOURCE DEVELOPMENT SERVICES,  
23 INC. et al.,

24 Defendants.

CASE NO. C 10-01324 JF

**DEFENDANT RESOURCE  
DEVELOPMENT SERVICES, INC'S  
ANSWER TO PLAINTIFF'S SECOND  
AMENDED COMPLAINT**

**DEMAND FOR JURY TRIAL**

25 Resource Development Services, Inc. ("RDS," or "Defendant"), by and through counsel,  
26 answers the allegations in National Union Fire Insurance Company of Pittsburgh's Second  
27 Amended Complaint as follows:

28 1. Answering paragraph 1 of the Second Amended Complaint, RDS lacks information  
or knowledge sufficient to form a belief as to the truth of the averment regarding the plaintiff's  
corporate structure and principal place of business, and on that basis denies the averment in its  
entirety.

1       2. Answering paragraph 2 of the Second Amended Complaint, RDS lacks information  
2 or knowledge sufficient to form a belief as to the truth of the averment regarding plaintiff's status  
3 as subrogee, and on that basis denies the averment in its entirety.

4       3. Answering paragraph 3 of the Second Amended Complaint, RDS admits that RDS  
5 is a corporation organized and existing under the laws of the state of California with its principal  
6 place of business located in the County of Santa Clara. RDS lacks information or knowledge  
7 sufficient to form a belief as to the truth of the averment that RDS was incorporated and existed  
8 "at all times relevant hereto," and on that basis denies the averment. Except as specifically  
9 admitted, RDS denies each and every averment of paragraph 3.

10      4. Answering paragraph 4 of the Second Amended Complaint, this paragraph is  
11 directed to a party other than RDS, and no response is required. To the extent that a response is  
12 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
13 of the averment, and on that basis denies the averment.

14      5. Answering paragraph 5 of the Second Amended Complaint, this paragraph is  
15 directed to parties other than RDS, and no response is required. To the extent that a response is  
16 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
17 of the averment, and on that basis denies the averment.

18      6. Answering paragraph 6 of the Second Amended Complaint, this paragraph is  
19 directed to parties other than RDS, and no response is required. To the extent that a response is  
20 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
21 of the averment, and on that basis denies the averment.

22      7. Answering paragraph 7 of the Second Amended Complaint, this paragraph is  
23 directed to parties other than RDS, and no response is required. To the extent that a response is  
24 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
25 of the averment, and on that basis denies the averment.

26      8. Answering paragraph 8 of the Second Amended Complaint, this paragraph is  
27 directed to parties other than RDS, and no response is required. To the extent that a response is  
28 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth

1 of the averment, and on that basis denies the averment.

2       9. Answering paragraph 9 of the Second Amended Complaint, this paragraph is  
3 directed to parties other than RDS, and no response is required. To the extent that a response is  
4 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
5 of the averment, and on that basis denies the averment.

6       10. Answering paragraph 10 of the Second Amended Complaint, this paragraph is  
7 directed to parties other than RDS, and no response is required. To the extent that a response is  
8 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
9 of the averment, and on that basis denies the averment.

10      11. Answering paragraph 11 of the Second Amended Complaint, this paragraph is  
11 directed to parties other than RDS, and no response is required. To the extent that a response is  
12 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
13 of the averment, and on that basis denies the averment.

14      12. Answering paragraph 12 of the Second Amended Complaint, this paragraph is  
15 directed to parties other than RDS, and no response is required. To the extent that a response is  
16 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
17 of the averment, and on that basis denies the averment.

18      13. Answering paragraph 13 of the Second Amended Complaint, this paragraph is  
19 directed to parties other than RDS, and no response is required. To the extent that a response is  
20 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
21 of the averment, and on that basis denies the averment.

22      14. Answering paragraph 14 of the Second Amended Complaint, this paragraph is  
23 directed to parties other than RDS, and no response is required. To the extent that a response is  
24 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
25 of the averment, and on that basis denies the averment.

26      15. Answering paragraph 15 of the Second Amended Complaint, this paragraph is  
27 directed to parties other than RDS, and no response is required. To the extent that a response is  
28 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth

1 of the averment, and on that basis denies the averment.

2       16. Answering paragraph 16 of the Second Amended Complaint, this paragraph is  
3 directed to parties other than RDS, and no response is required. To the extent that a response is  
4 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
5 of the averment, and on that basis denies the averment.

6       17. Answering paragraph 17 of the Second Amended Complaint, this paragraph is  
7 directed to parties other than RDS, and no response is required. To the extent that a response is  
8 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
9 of the averment, and on that basis denies the averment.

10      18. Answering paragraph 18 of the Second Amended Complaint, this paragraph is  
11 directed to parties other than RDS, and no response is required. To the extent that a response is  
12 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
13 of the averment, and on that basis denies the averment.

14      19. Answering paragraph 19 of the Second Amended Complaint, this paragraph is  
15 directed to parties other than RDS, and no response is required. To the extent that a response is  
16 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
17 of the averment, and on that basis denies the averment.

18      20. Answering paragraph 20 of the Second Amended Complaint, this paragraph is  
19 directed to parties other than RDS, and no response is required. To the extent that a response is  
20 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
21 of the averment, and on that basis denies the averment.

22      21. Answering paragraph 21 of the Second Amended Complaint, this paragraph is  
23 directed to parties other than RDS, and no response is required. To the extent that a response is  
24 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
25 of the averment, and on that basis denies the averment.

26      22. Answering paragraph 22 of the Second Amended Complaint, this paragraph is  
27 directed to parties other than RDS, and no response is required. To the extent that a response is  
28 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth

1 of the averment, and on that basis denies the averment.

2       23. Answering paragraph 23 of the Second Amended Complaint, this paragraph is  
3 directed to parties other than RDS, and no response is required. To the extent that a response is  
4 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
5 of the averment, and on that basis denies the averment.

6       24. Answering paragraph 24 of the Second Amended Complaint, this paragraph is  
7 directed to parties other than RDS, and no response is required. To the extent that a response is  
8 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
9 of the averment, and on that basis denies the averment.

10      25. Answering paragraph 25 of the Second Amended Complaint, this paragraph is  
11 directed to parties other than RDS, and no response is required. To the extent that a response is  
12 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
13 of the averment, and on that basis denies the averment.

14      26. Answering paragraph 26 of the Second Amended Complaint, this paragraph is  
15 directed to parties other than RDS, and no response is required. To the extent that a response is  
16 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
17 of the averment, and on that basis denies the averment.

18      27. Answering paragraph 27 of the Second Amended Complaint, this paragraph is  
19 directed to parties other than RDS, and no response is required. To the extent that a response is  
20 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
21 of the averment, and on that basis denies the averment.

22      28. Answering paragraph 28 of the Second Amended Complaint, this paragraph is  
23 directed to parties other than RDS, and no response is required. To the extent that a response is  
24 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
25 of the averment, and on that basis denies the averment.

26      29. Answering paragraph 29 of the Second Amended Complaint, this paragraph is  
27 directed to parties other than RDS, and no response is required. To the extent that a response is  
28 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth

1 of the averment, and on that basis denies the averment.

2       30. Answering paragraph 30 of the Second Amended Complaint, this paragraph is  
3 directed to parties other than RDS, and no response is required. To the extent that a response is  
4 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
5 of the averment, and on that basis denies the averment.

6       31. Answering paragraph 31 of the Second Amended Complaint, this paragraph is  
7 directed to parties other than RDS, and no response is required. To the extent that a response is  
8 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
9 of the averment, and on that basis denies the averment.

10      32. Answering paragraph 32 of the Second Amended Complaint, this paragraph is  
11 directed to parties other than RDS, and no response is required. To the extent that a response is  
12 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
13 of the averment, and on that basis denies the averment.

14      33. Answering paragraph 33 of the Second Amended Complaint, this paragraph is  
15 directed to parties other than RDS, and no response is required. To the extent that a response is  
16 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
17 of the averment, and on that basis denies the averment.

18      34. Answering paragraph 34 of the Second Amended Complaint, this paragraph is  
19 directed to parties other than RDS, and no response is required. To the extent that a response is  
20 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
21 of the averment, and on that basis denies the averment.

22      35. Answering paragraph 35 of the Second Amended Complaint, this paragraph is  
23 directed to parties other than RDS, and no response is required. To the extent that a response is  
24 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
25 of the averment, and on that basis denies the averment.

26      36. Answering paragraph 36 of the Second Amended Complaint, this paragraph is  
27 directed to parties other than RDS, and no response is required. To the extent that a response is  
28 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth

1 of the averment, and on that basis denies the averment.

2       37. Answering paragraph 37 of the Second Amended Complaint, this paragraph is  
3 directed to parties other than RDS, and no response is required. To the extent that a response is  
4 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
5 of the averment, and on that basis denies the averment.

6       38. Answering paragraph 38 of the Second Amended Complaint, this paragraph is  
7 directed to parties other than RDS, and no response is required. To the extent that a response is  
8 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
9 of the averment, and on that basis denies the averment.

10      39. Answering paragraph 39 of the Second Amended Complaint, this paragraph is  
11 directed to parties other than RDS, and no response is required. To the extent that a response is  
12 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
13 of the averment, and on that basis denies the averment.

14      40. Answering paragraph 40 of the Second Amended Complaint, this paragraph is  
15 directed to parties other than RDS, and no response is required. To the extent that a response is  
16 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
17 of the averment, and on that basis denies the averment.

18      41. Answering paragraph 41 of the Second Amended Complaint, this paragraph is  
19 directed to parties other than RDS, and no response is required. To the extent that a response is  
20 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
21 of the averment, and on that basis denies the averment.

22      42. Answering paragraph 42 of the Second Amended Complaint, this paragraph is  
23 directed to parties other than RDS, and no response is required. To the extent that a response is  
24 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
25 of the averment, and on that basis denies the averment.

26      43. Answering paragraph 43 of the Second Amended Complaint, RDS admits that  
27 plaintiff alleges that the Court has subject-matter jurisdiction pursuant to 28 U.S.C. §1332 but  
28 denies the merits of each and every claim alleged against them in the Complaint. Except as

1 specifically admitted, RDS denies each and every averment of paragraph 43.

2       44. Answering paragraph 44 of the Second Amended Complaint, RDS admits that  
3 plaintiff alleges that venue is proper in this judicial district, but denies having engaged in any  
4 transactions, acts, practices, or courses of conduct constituting a violation of the laws upon which  
5 venue is allegedly based. Except as specifically admitted, RDS denies each and every averment of  
6 paragraph 44.

7       45. Answering paragraph 45 of the Second Amended Complaint, RDS admits that RDS  
8 operated as a broker between waste-hauling companies and landfills, and negotiated disposal rates  
9 with landfills, including the Kirby Canyon Landfill. Except as specifically admitted, RDS denies  
10 each and every averment of paragraph 45.

11       46. Answering paragraph 46 of the Second Amended Complaint, RDS admits that Mr.  
12 Lucero was a principal of RDS. Except as specifically admitted, RDS denies each and every  
13 averment of paragraph 46.

14       47. Answering paragraph 47 of the Second Amended Complaint, RDS admits that  
15 Aracelli Franco was employed by RDS as a billing clerk. As to the averments regarding Franco's  
16 conduct, these averments are directed to a party other than RDS, and no response is required. To  
17 the extent that a response is deemed necessary, RDS lacks information or knowledge sufficient to  
18 form a belief as to the truth of the averment, and on that basis denies the averment. Except as  
19 specifically admitted, RDS denies each and every averment of paragraph 47.

20       48. Answering paragraph 48 of the Second Amended Complaint, RDS admits that  
21 Elvia Nenque was employed by RDS as a billing clerk. As to the averments regarding Nenque's  
22 conduct, these averments are directed to a party other than RDS, and no response is required. To  
23 the extent that a response is deemed necessary, RDS lacks information or knowledge sufficient to  
24 form a belief as to the truth of the averment, and on that basis denies the averment. Except as  
25 specifically admitted, RDS denies each and every averment of paragraph 48.

26       49. Answering paragraph 49 of the Second Amended Complaint, RDS admits that  
27 Martha Renteria was employed by RDS as an accountant and bookkeeper, and that she worked in  
28 a business suite in Salinas, California. As to the averments regarding Renteria's conduct, these

1 averments are directed to a party other than RDS, and no response is required. To the extent that a  
2 response is deemed necessary, RDS lacks information or knowledge sufficient to form a belief as  
3 to the truth of the averments, and on that basis denies the averments. Except as specifically  
4 admitted, RDS denies each and every averment of paragraph 49.

5       50. Answering paragraph 50 of the Second Amended Complaint, the averments are  
6 directed to parties other than RDS, and no response is required. To the extent that a response is  
7 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
8 of the averments, and on that basis denies the averments.

9       51. Answering paragraph 51 of the Second Amended Complaint, the averments are  
10 directed to parties other than RDS, and no response is required. To the extent that a response is  
11 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
12 of the averments, and on that basis denies the averments.

13       52. Answering paragraph 52 of the Second Amended Complaint, the averments are  
14 directed to parties other than RDS, and no response is required. To the extent that a response is  
15 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
16 of the averments, and on that basis denies the averments.

17       53. Answering paragraph 53 of the Second Amended Complaint, the averments are  
18 directed to parties other than RDS, and no response is required. To the extent that a response is  
19 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
20 of the averments, and on that basis denies the averments.

21       54. Answering paragraph 54 of the Second Amended Complaint, the averments are  
22 directed to parties other than RDS, and no response is required. To the extent that a response is  
23 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
24 of the averments, and on that basis denies the averments.

25       55. Answering paragraph 55 of the Second Amended Complaint, the averments are  
26 directed to parties other than RDS, and no response is required. To the extent that a response is  
27 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
28 of the averments, and on that basis denies the averments.

1       56. Answering paragraph 56 of the Second Amended Complaint, the averments are  
 2 directed to parties other than RDS, and no response is required. To the extent that a response is  
 3 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
 4 of the averments, and on that basis denies the averments.

5       57. Answering paragraph 57 of the Second Amended Complaint, the averments are  
 6 directed to parties other than RDS, and no response is required. To the extent that a response is  
 7 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
 8 of the averments, and on that basis denies the averments.

9       58. Answering paragraph 58 of the Second Amended Complaint, RDS admits that  
 10 Valley Recycling, Randazzo Enterprises, Dominguez & Sons, Premier Recycling, Pacific Coast  
 11 Recycling, Gibson's Resource Group, Cal Waste, Accurate Cleaning Systems, Alviso, A&S  
 12 Metals, D&C Construction, JLV Equipment, DVBE Trucking, Nogalera Trucking, A&A  
 13 Recycling, Bay Area Hauling Maintenance, Dependable Waste Solutions, Paramount Drywall,  
 14 RAD Roll-Off, All Trash, Bay Cal Recycling, JM Hauling, Almaden Construction, Del Toro,  
 15 Espinoza & Daughter Hauling, and Affordable Roofing were RDS trucking customers. As to the  
 16 averments regarding actions of those defendants, those averments are directed to parties other than  
 17 RDS, and no response is required. To the extent that a response is deemed necessary, RDS lacks  
 18 information or knowledge sufficient to form a belief as to the truth of the averments, and on that  
 19 basis denies the averments. As to the averments regarding whether the trucking company  
 20 defendants were RDS customers "at all relevant times," RDS lacks information or knowledge  
 21 sufficient to form a belief as to the truth of the averment, and on that basis denies the averment.  
 22 Except as specifically admitted, RDS denies each and every averment of paragraph 58.

23       59. Answering paragraph 59 of the Second Amended Complaint, RDS denies the  
 24 averments.

25       60. Answering paragraph 60 of the Second Amended Complaint, RDS lacks  
 26 information or knowledge sufficient to form a belief as to the truth of the averments, and on that  
 27 basis denies the averments.

28       61. Answering paragraph 61 of the Second Amended Complaint, RDS lacks

1 information or knowledge sufficient to form a belief as to the truth of the averments, and on that  
2 basis denies the averments.

3       62. Answering paragraph 62 of the Second Amended Complaint, RDS lacks  
4 information or knowledge sufficient to form a belief as to the truth of the averments, and on that  
5 basis denies the averments.

6       63. Answering paragraph 63 of the Second Amended Complaint, the averments are  
7 directed to parties other than RDS, and no response is required. To the extent that a response is  
8 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
9 of the averments, and on that basis denies the averments.

10      64. Answering paragraph 64 of the Second Amended Complaint, RDS denies each and  
11 every averment in this paragraph.

12      65. Answering paragraph 65 of the Second Amended Complaint, as to the averments  
13 directed to parties other than RDS, no response is required. To the extent that a response is  
14 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
15 of the averments, and on that basis denies the averments. RDS denies each and every remaining  
16 averment in paragraph 65.

17      66. Answering paragraph 66 of the Second Amended Complaint, as to the averments  
18 directed to parties other than RDS, no response is required. To the extent that a response is  
19 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
20 of the averments, and on that basis denies the averments. RDS denies each and every remaining  
21 averment in paragraph 66.

22      67. Answering paragraph 67 of the Second Amended Complaint, as to the averments  
23 directed to parties other than RDS, no response is required. To the extent that a response is  
24 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
25 of the averments, and on that basis denies the averments. RDS denies each and every remaining  
26 averment in paragraph 67.

27      68. Answering paragraph 68 of the Second Amended Complaint, as to the averments  
28 directed to parties other than RDS, no response is required. To the extent that a response is

1 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
2 of the averments, and on that basis denies the averments. RDS denies each and every remaining  
3 averment in paragraph 68.

4       69. Answering paragraph 69 of the Second Amended Complaint, the averment  
5 regarding what the trucking company defendants “knew” is directed to parties other than RDS,  
6 and no response is required. The averments in the second sentence are directed to parties other  
7 than RDS, and no response is required. To the extent that a response is deemed necessary, RDS  
8 lacks information or knowledge sufficient to form a belief as to the truth of the averments, and on  
9 that basis denies the averments. RDS denies each and every remaining averment of paragraph 69.

10      70. Answering paragraph 70 of the Second Amended Complaint, the averment  
11 regarding what each and every one of the trucking company defendants “knew” or “understood” is  
12 directed to parties other than RDS, and no response is required. To the extent that a response is  
13 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
14 of the averment, and on that basis denies the averment. RDS denies each and every remaining  
15 averment of paragraph 70.

16      71. Answering paragraph 71 of the Second Amended Complaint, the averment  
17 regarding what each and every one of the trucking company defendants “knew” or “understood” is  
18 directed to parties other than RDS, and no response is required. To the extent that a response is  
19 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
20 of the averment, and on that basis denies the averment. RDS denies each and every remaining  
21 averment of paragraph 71.

22      72. Answering paragraph 72 of the Second Amended Complaint, as to the averments  
23 directed to parties other than RDS, no response is required. To the extent that a response is  
24 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
25 of the averments, and on that basis denies the averments. RDS denies each and every remaining  
26 averment of paragraph 72.

27      73. Answering paragraph 73 of the Second Amended Complaint, the averments in the  
28 first sentence regarding what each of the trucking company defendants “knew” are directed to

1 parties other than RDS, and no response is required. To the extent that a response is deemed  
 2 necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth of the  
 3 averments, and on that basis denies the averments. RDS denies each and every remaining  
 4 averment of paragraph 73.

5       74. Answering paragraph 74 of the Second Amended Complaint, the averments in this  
 6 paragraph regarding the actions of any other defendant are directed to parties other than RDS, and  
 7 no response is required. To the extent that a response is deemed necessary, RDS lacks  
 8 information or knowledge sufficient to form a belief as to the truth of the averments, and on that  
 9 basis denies the averments. RDS denies each and every remaining averment of paragraph 74.

10     75. Answering paragraph 75 of the Second Amended Complaint, this paragraph  
 11 purports to reaffirm and reallege each and every allegation set forth in paragraphs 1 through 74, to  
 12 which no additional response is required.

13     76. Answering paragraph 76 of the Second Amended Complaint, the averments in this  
 14 paragraph regarding the actions of any other defendant are directed to parties other than RDS, and  
 15 no response is required. To the extent that a response is deemed necessary, RDS lacks  
 16 information or knowledge sufficient to form a belief as to the truth of the averments, and on that  
 17 basis denies the averments. RDS denies each and every remaining averment of paragraph 76.

18       a.     Answering subparagraph (a) of paragraph 76 of the Second Amended  
 19 Complaint, the averments in this subparagraph are directed to parties other than RDS, and no  
 20 response is required. To the extent that a response is deemed necessary, RDS lacks information or  
 21 knowledge sufficient to form a belief as to the truth of the averments, and on that basis denies the  
 22 averments.

23       b.     Answering subparagraph (b) of paragraph 76 of the Second Amended  
 24 Complaint, RDS denies the averment.

25       c.     Answering subparagraph (c) of paragraph 76 of the Second Amended  
 26 Complaint, RDS denies the averment. To the extent the averment in this subparagraph refers to  
 27 actions taken by “Lucero and/or Franco,” the averment is directed to parties other than RDS, and  
 28 no response is required. To the extent that a response is deemed necessary, RDS lacks

1 information or knowledge sufficient to form a belief as to the truth of the averment, and on that  
2 basis denies the averment.

3       77. Answering paragraph 77 of the Second Amended Complaint, the averment  
4 regarding the awareness of any other defendant is directed to parties other than RDS, and no  
5 response is required. To the extent that a response is deemed necessary, RDS lacks information or  
6 knowledge sufficient to form a belief as to the truth of the averment, and on that basis denies the  
7 averment. RDS denies each and every remaining averment of paragraph 77.

8           a.       Answering subparagraph (a) of paragraph 77, the averments are directed to  
9 parties other than RDS, and no response is required. To the extent that a response is deemed  
10 necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth of the  
11 averments, and on that basis denies the averments.

12           b.       Answering subparagraph (b) of paragraph 77, the averment is directed to  
13 parties other than RDS, and no response is required. To the extent that a response is deemed  
14 necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth of the  
15 averment, and on that basis denies the averment.

16           c.       Answering subparagraph (c) of paragraph 77, RDS denies each and every  
17 averment.

18           d.       Answering subparagraph (d) of paragraph 77, the averment is directed to  
19 parties other than RDS, and no response is required. To the extent that a response is deemed  
20 necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth of the  
21 averment, and on that basis denies the averment.

22           e.       Answering subparagraph (e) of paragraph 77, the averment is directed to  
23 parties other than RDS, and no response is required. To the extent that a response is deemed  
24 necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth of the  
25 averment, and on that basis denies the averment.

26           f.       Answering subparagraph (f) of paragraph 77, the averment is directed to  
27 parties other than RDS, and no response is required. To the extent that a response is deemed  
28 necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth of the

1 averment, and on that basis denies the averment.

2 g. Answering subparagraph (g) of paragraph 77, the averment is directed to  
 3 parties other than RDS, and no response is required. To the extent that a response is deemed  
 4 necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth of the  
 5 averment, and on that basis denies the averment.

6 h. Answering subparagraph (h) of paragraph 77, the averment is directed to  
 7 parties other than RDS, and no response is required. To the extent that a response is deemed  
 8 necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth of the  
 9 averment, and on that basis denies the averment..

10 78. Answering paragraph 78 of the Second Amended Complaint, the averment  
 11 concerning Franco's awareness is directed to parties other than RDS, and no response is required.  
 12 To the extent that a response is deemed necessary, RDS lacks information or knowledge sufficient  
 13 to form a belief as to the truth of the averment, and on that basis denies the averment.

14 a. Answering subparagraph (a) of paragraph 78, the averment is directed to  
 15 parties other than RDS, and no response is required. To the extent that a response is deemed  
 16 necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth of the  
 17 averment, and on that basis denies the averment.

18 b. Answering subparagraph (b) of paragraph 78, the averment is directed to  
 19 parties other than RDS, and no response is required. To the extent that a response is deemed  
 20 necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth of the  
 21 averment, and on that basis denies the averment.

22 c. Answering subparagraph (c) of paragraph 78, the averments in this  
 23 subparagraph regarding the actions of other defendants are directed to parties other than RDS, and  
 24 no response is required. To the extent that a response is deemed necessary, RDS lacks  
 25 information or knowledge sufficient to form a belief as to the truth of the averment, and on that  
 26 basis denies the averment. RDS denies each and every remaining averment of subparagraph (c).

27 d. Answering subparagraph (d) of paragraph 78, RDS admits that Franco was  
 28 at one time responsible for RDS's accounts receivables and billing and that she prepared some

1 invoices for some of the trucking company defendants. As to the averments regarding the  
 2 “understanding” of Franco, the averments are directed to parties other than RDS, and no response  
 3 is required. To the extent that a response is deemed necessary, RDS lacks information or  
 4 knowledge sufficient to form a belief as to the truth of the averments, and on that basis denies the  
 5 averments. Except as specifically admitted, RDS denies each and every averment of subparagraph  
 6 (d).

7           e.       Answering subparagraph (e) of paragraph 78, as to the averment directed to  
 8 parties other than RDS, no response is required. To the extent that a response is deemed  
 9 necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth of the  
 10 averment regarding Franco’s awareness of any facts, and on that basis denies the averment. RDS  
 11 denies each and every remaining averment of subparagraph (e).

12          79.      Answering paragraph 79 of the Second Amended Complaint, the averment  
 13 regarding Nenque’s awareness is directed to parties other than RDS, and no response is required.  
 14 To the extent that a response is deemed necessary, RDS lacks information or knowledge sufficient  
 15 to form a belief as to the truth of the averment, and on that basis denies the averment. RDS denies  
 16 each and every remaining averment of paragraph 79.

17           a.       Answering subparagraph (a) of paragraph 79, the averment is directed to  
 18 parties other than RDS, and no response is required. To the extent that a response is deemed  
 19 necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth of the  
 20 averment, and on that basis denies the averment.

21           b.       Answering subparagraph (b) of paragraph 79, the averment is directed to  
 22 parties other than RDS, and no response is required. To the extent that a response is deemed  
 23 necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth of the  
 24 averment, and on that basis denies the averment.

25          80.      Answering paragraph 80 of the Second Amended Complaint, RDS admits that  
 26 Renteria was tasked with handling some of RDS’s accounts payable and disbursements. As to the  
 27 averment regarding Renteria’s awareness, or the awareness or actions of other defendants, the  
 28 averment is directed to parties other than RDS, and no response is required. To the extent that a

1 response is deemed necessary, RDS lacks information or knowledge sufficient to form a belief as  
 2 to the truth of the averment, and on that basis denies the averment. Except as specifically  
 3 admitted, RDS denies each and every averment of paragraph 80.

4       81. Answering paragraph 81 of the Second Amended Complaint, the averments  
 5 regarding the knowledge or actions of any other defendants or Waste Management are directed to  
 6 parties other than RDS, and no response is required. To the extent that a response is deemed  
 7 necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth of the  
 8 averments, and on that basis denies the averments. As to the averment regarding materiality, this  
 9 averment calls for a legal conclusion to which no response is required. To the extent that a  
 10 response is deemed necessary, RDS lacks information or knowledge sufficient to form a belief as  
 11 to the truth of the averment, and on that basis denies the averment. RDS denies each and every  
 12 remaining averment of paragraph 81.

13       82. Answering paragraph 82 of the Second Amended Complaint, the averments  
 14 regarding the actions of any other defendants are directed to parties other than RDS, and no  
 15 response is required. To the extent that a response is deemed necessary, RDS lacks information or  
 16 knowledge sufficient to form a belief as to the truth of the averments, and on that basis denies the  
 17 averments. RDS denies each and every remaining averment of paragraph 82.

18       83. Answering paragraph 83 of the Second Amended Complaint, the averments  
 19 regarding the actions of any other defendants are directed to parties other than RDS, and no  
 20 response is required. To the extent that a response is deemed necessary, RDS lacks information or  
 21 knowledge sufficient to form a belief as to the truth of the averments, and on that basis denies the  
 22 averments. RDS denies each and every remaining averment of paragraph 83.

23       84. Answering paragraph 84 of the Second Amended Complaint, as to the averments  
 24 directed to parties other than RDS, no response is required. To the extent that a response is  
 25 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
 26 of the averments, and on that basis denies the averments. RDS denies each and every remaining  
 27 averment of paragraph 84.

28       85. Answering paragraph 85 of the Second Amended Complaint, the averments

1 regarding the actions of any other defendants are directed to parties other than RDS, and no  
 2 response is required. To the extent that a response is deemed necessary, RDS lacks information or  
 3 knowledge sufficient to form a belief as to the truth of the averments, and on that basis denies the  
 4 averments. RDS denies each and every remaining averment of paragraph 85.

5       86. Answering paragraph 86 of the Second Amended Complaint, the averments  
 6 regarding the actions and duties of any other defendants are directed to parties other than RDS,  
 7 and no response is required. To the extent that a response is deemed necessary, RDS lacks  
 8 information or knowledge sufficient to form a belief as to the truth of the averments, and on that  
 9 basis denies the averments. As to the averments regarding legal duties, these averments call for a  
 10 legal conclusion to which no response is required. To the extent that a response is deemed  
 11 necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth of the  
 12 averments, and on that basis denies the averments. RDS denies each and every remaining  
 13 averment of paragraph 86.

14       87. Answering paragraph 87 of the Second Amended Complaint, the averments are  
 15 directed to parties other than RDS, and no response is required. To the extent that a response is  
 16 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
 17 of the averments, and on that basis denies the averments.

18       88. Answering paragraph 88 of the Second Amended Complaint, RDS denies each and  
 19 every averment.

20       89. Answering paragraph 89 of the Second Amended Complaint, plaintiff's claim for  
 21 punitive damages was previously stricken by order of this Court, so no response from RDS is  
 22 required. Moreover, the averments in this paragraph state a legal conclusion that requires no  
 23 response. To the extent that a response is deemed necessary, RDS denies the averments in their  
 24 entirety.

25       90. Answering paragraph 90 of the Second Amended Complaint, this paragraph  
 26 purports to reaffirm and reallege each and every allegation set forth in paragraphs 1 through 89, to  
 27 which no additional response is required.

28       91. Answering paragraph 91 of the Second Amended Complaint, as to the averments

1 directed to parties other than RDS, no response is required. To the extent that a response is  
2 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
3 of the averments, and on that basis denies the averments. RDS denies each and every remaining  
4 averment of paragraph 91.

5       92. Answering paragraph 92 of the Second Amended Complaint, as to the averments  
6 directed to parties other than RDS, no response is required. To the extent that a response is  
7 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
8 of the averments, and on that basis denies the averments. RDS denies each and every remaining  
9 averment of paragraph 92.

10      93. Answering paragraph 93 of the Second Amended Complaint, as to the averments  
11 directed to parties other than RDS, no response is required. To the extent that a response is  
12 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
13 of the averments, and on that basis denies the averments. RDS denies each and every remaining  
14 averment of paragraph 93.

15      94. Answering paragraph 94 of the Second Amended Complaint, as to the averments  
16 directed to parties other than RDS, no response is required. To the extent that a response is  
17 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
18 of the averments, and on that basis denies the averments. RDS denies each and every remaining  
19 averment of paragraph 94.

20      95. Answering paragraph 95 of the Second Amended Complaint, RDS denies having  
21 acted in concert or otherwise conspired with any other defendant. As to any averments regarding  
22 the knowledge or acts of other defendants, the averments are directed to parties other than RDS,  
23 and no response is required. To the extent that a response is deemed necessary, RDS lacks  
24 information or knowledge sufficient to form a belief as to the truth of the averments, and on that  
25 basis denies the averments. RDS denies each and every remaining averment of paragraph 95.

26      96. Answering paragraph 96 of the Second Amended Complaint, as to the averments  
27 directed to parties other than RDS, no response is required. To the extent that a response is  
28 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth

1 of the averments, and on that basis denies the averments. RDS denies each and every remaining  
2 averment of paragraph 96.

3       97. Answering paragraph 97 of the Second Amended Complaint, RDS denies that it  
4 conspired or agreed with any other defendant to conceal any facts. As to the averments regarding  
5 the knowledge or acts of other defendants, the averments are directed to parties other than RDS,  
6 and no response is required. To the extent that a response is deemed necessary, RDS lacks  
7 information or knowledge sufficient to form a belief as to the truth of the averments, and on that  
8 basis denies the averments. RDS denies each and every remaining averment of paragraph 97.

9       98. Answering paragraph 98 of the Second Amended Complaint, the averments are  
10 directed to parties other than RDS, and no response is required. To the extent that a response is  
11 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
12 of the averments, and on that basis denies the averments.

13       99. Answering paragraph 99 of the Second Amended Complaint, as to the averments  
14 regarding the actions of other defendants, the averments are directed to parties other than RDS,  
15 and no response is required. To the extent that a response is deemed necessary, RDS lacks  
16 information or knowledge sufficient to form a belief as to the truth of the averments, and on that  
17 basis denies the averments. RDS denies each and every remaining averment of paragraph 99.

18       100. Answering paragraph 100 of the Second Amended Complaint, as to any averments  
19 regarding the actions of other defendants, the averments are directed to parties other than RDS,  
20 and no response is required. To the extent that a response is deemed necessary, RDS lacks  
21 information or knowledge sufficient to form a belief as to the truth of the averments, and on that  
22 basis denies the averments. RDS denies each and every remaining averment of paragraph 100.

23       101. Answering paragraph 101 of the Second Amended Complaint, RDS denies each  
24 and every averment.

25       102. Answering paragraph 102 of the Second Amended Complaint, as to any averments  
26 regarding the actions of other parties, the averments are directed to parties other than RDS, and no  
27 response is required. To the extent that a response is deemed necessary, RDS lacks information or  
28 knowledge sufficient to form a belief as to the truth of the averments, and on that basis denies the

1 averments. RDS denies each and every remaining averment of paragraph 102.

2       103. Answering paragraph 103 of the Second Amended Complaint, plaintiff's claim for  
 3 punitive damages was previously stricken by order of this Court, so no response from RDS is  
 4 required. Moreover, the averments in this paragraph state a legal conclusion that requires no  
 5 response. To the extent that a response is deemed necessary, RDS denies the averments in their  
 6 entirety.

7       104. Answering paragraph 104 of the Second Amended Complaint, this paragraph  
 8 purports to reaffirm and reallege each and every allegation set forth in paragraphs 1 through 103,  
 9 to which no additional response is required.

10      105. Answering paragraph 105 of the Second Amended Complaint, the averments are  
 11 directed to parties other than RDS, and no response is required. To the extent that a response is  
 12 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
 13 of the averments, and on that basis denies the averments.

14      106. Answering paragraph 106 of the Second Amended Complaint, the averments are  
 15 directed to parties other than RDS, and no response is required. To the extent that a response is  
 16 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
 17 of the averments, and on that basis denies the averments.

18      107. Answering paragraph 107 of the Second Amended Complaint, the averment is  
 19 directed to parties other than RDS, and no response is required. To the extent that a response is  
 20 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
 21 of the averment, and on that basis denies the averment.

22      108. Answering paragraph 108 of the Second Amended Complaint, as to the averments  
 23 regarding the actions and knowledge of other defendants, the averments are directed to parties  
 24 other than RDS, and no response is required. To the extent that a response is deemed necessary,  
 25 RDS lacks information or knowledge sufficient to form a belief as to the truth of the averments,  
 26 and on that basis denies the averments. RDS denies each and every remaining averment of  
 27 paragraph 108.

28      109. Answering paragraph 109 of the Second Amended Complaint, as to any averments

1 regarding the actions of other parties, the averments are directed to parties other than RDS, and no  
2 response is required. To the extent that a response is deemed necessary, RDS lacks information or  
3 knowledge sufficient to form a belief as to the truth of the averments, and on that basis denies the  
4 averments. RDS denies each and every remaining averment of paragraph 109.

5       110. Answering paragraph 110 of the Second Amended Complaint, the averments call  
6 for a legal conclusion and are directed to parties other than RDS, and no response is required. To  
7 the extent that a response is deemed necessary, RDS lacks information or knowledge sufficient to  
8 form a belief as to the truth of the averments, and on that basis denies the averments.

9       111. Answering paragraph 111 of the Second Amended Complaint, this paragraph  
10 purports to reaffirm and reallege each and every allegation set forth in paragraphs 1 through 89, to  
11 which no additional response is required.

12       112. Answering paragraph 112 of the Second Amended Complaint, the averment is  
13 directed to parties other than RDS, and no response is required. To the extent that a response is  
14 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
15 of the averment, and on that basis denies the averment.

16       113. Answering paragraph 113 of the Second Amended Complaint, the averments are  
17 directed to parties other than RDS, and no response is required. To the extent that a response is  
18 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
19 of the averments, and on that basis denies the averments.

20       114. Answering paragraph 114 of the Second Amended Complaint, the averment is  
21 directed to parties other than RDS, and no response is required. To the extent that a response is  
22 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
23 of the averment, and on that basis denies the averment.

24       115. Answering paragraph 115 of the Second Amended Complaint, as to the averments  
25 regarding the knowledge or actions of other defendants, the averments are directed to parties other  
26 than RDS, and no response is required. To the extent that a response is deemed necessary, RDS  
27 lacks information or knowledge sufficient to form a belief as to the truth of the averments, and on  
28 that basis denies the averments. RDS denies each and every remaining averment of paragraph

1 115.

2       116. Answering paragraph 116 of the Second Amended Complaint, the averment is  
3 directed to parties other than RDS, and no response is required. To the extent that a response is  
4 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
5 of the averment, and on that basis denies the averment.

6       117. Answering paragraph 117 of the Second Amended Complaint, the averment is  
7 directed to parties other than RDS, and no response is required. To the extent that a response is  
8 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
9 of the averment, and on that basis denies the averment.

10      118. Answering paragraph 118 of the Second Amended Complaint, this paragraph  
11 purports to reaffirm and reallege each and every allegation set forth in paragraphs 1 through 89  
12 and 111 through 117, to which no additional response is required.

13      119. Answering paragraph 119 of the Second Amended Complaint, the averment is  
14 directed to parties other than RDS, and no response is required. To the extent that a response is  
15 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
16 of the averment, and on that basis denies the averment.

17      120. Answering paragraph 120 of the Second Amended Complaint, the averment is  
18 directed to parties other than RDS, and no response is required. To the extent that a response is  
19 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
20 of the averment, and on that basis denies the averment.

21      121. Answering paragraph 121 of the Second Amended Complaint, the averment is  
22 directed to parties other than RDS, and no response is required. To the extent that a response is  
23 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
24 of the averment, and on that basis denies the averment.

25      122. Answering paragraph 122 of the Second Amended Complaint, the averment is  
26 directed to parties other than RDS, and no response is required. To the extent that a response is  
27 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
28 of the averment, and on that basis denies the averment.

1       123. Answering paragraph 123 of the Second Amended Complaint, this paragraph  
2 purports to reaffirm and reallege each and every allegation set forth in paragraphs 1 through 74, to  
3 which no additional response is required.

4       124. Answering paragraph 124 of the Second Amended Complaint, the averment is  
5 directed to parties other than RDS, and no response is required. To the extent that a response is  
6 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
7 of the averment, and on that basis denies the averment.

8       125. Answering paragraph 125 of the Second Amended Complaint, the averment is  
9 directed to parties other than RDS, and no response is required. To the extent that a response is  
10 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
11 of the averment, and on that basis denies the averment.

12       126. Answering paragraph 126 of the Second Amended Complaint, the averment is  
13 directed to parties other than RDS, and no response is required. To the extent that a response is  
14 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
15 of the averment, and on that basis denies the averment.

16       127. Answering paragraph 127 of the Second Amended Complaint, the averment is  
17 directed to parties other than RDS, and no response is required. To the extent that a response is  
18 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
19 of the averment, and on that basis denies the averment.

20       128. Answering paragraph 128 of the Second Amended Complaint, the averment is  
21 directed to parties other than RDS, and no response is required. To the extent that a response is  
22 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
23 of the averment, and on that basis denies the averment.

24       129. Answering paragraph 129 of the Second Amended Complaint, the averment is  
25 directed to parties other than RDS, and no response is required. To the extent that a response is  
26 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
27 of the averment, and on that basis denies the averment.

28       130. Answering paragraph 130 of the Second Amended Complaint, this paragraph

1 purports to reaffirm and reallege each and every allegation set forth in paragraphs 1 through 103,  
2 to which no additional response is required.

3       131. Answering paragraph 131 of the Second Amended Complaint, the averment is  
4 directed to parties other than RDS, and no response is required. To the extent that a response is  
5 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
6 of the averment, and on that basis denies the averment.

7       132. Answering paragraph 132 of the Second Amended Complaint, the averment that  
8 RDS were engaged in a fraudulent concealment calls for a legal conclusion to which no response  
9 is required. To the extent that a response is deemed necessary, RDS denies the averment in its  
10 entirety. As to the averments regarding the actions or knowledge of other defendants, the  
11 averments are directed to parties other than RDS, and no response is required. To the extent that a  
12 response is deemed necessary, RDS lacks information or knowledge sufficient to form a belief as  
13 to the truth of the averments, and on that basis denies the averments. RDS denies each and every  
14 remaining averment of paragraph 132.

133. Answering paragraph 133 of the Second Amended Complaint, the averment is directed to parties other than RDS, and no response is required. To the extent that a response is deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth of the averment, and on that basis denies the averment.

19       134. Answering paragraph 134 of the Second Amended Complaint, the averment is  
20 directed to parties other than RDS, and no response is required. To the extent that a response is  
21 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth  
22 of the averment, and on that basis denies the averment.

## **DENIAL UNLESS EXPRESSLY ADMITTED**

24 RDS denies each and every allegation contained in the Second Amended Complaint that is  
25 not expressly admitted herein.

## PRAYER FOR RELIEF

Answering the plaintiff's prayer for relief, RDS denies that plaintiff is entitled to any relief for which it prays, or any relief in any amount or of any kind whatsoever.

1  
2                   **AFFIRMATIVE DEFENSES**

3                   As and for their affirmative defenses to plaintiff's Second Amended Complaint,  
4 Defendants state as follows:

5                   **FIRST AFFIRMATIVE DEFENSE**

6                   The Second Amended Complaint, and each and every claim for relief set forth therein, fails  
7 to state facts a claim against defendants upon which relief can be granted.

8                   **SECOND AFFIRMATIVE DEFENSE**

9                   The Second Amended Complaint, and each and every claim for relief set forth therein, is  
10 barred by the applicable statute of limitations.

11                   **THIRD AFFIRMATIVE DEFENSE**

12                   The Second Amended Complaint, and each and every claim for relief set forth therein, is  
13 barred by the doctrine of laches.

14                   **FOURTH AFFIRMATIVE DEFENSE**

15                   The Second Amended Complaint, and each and every claim for relief set forth therein, is  
16 barred and the plaintiff is estopped from obtaining any recovery.

17                   **FIFTH AFFIRMATIVE DEFENSE**

18                   The Second Amended Complaint, and each cause of action therein, is barred by virtue of  
19 the doctrine of unclean hands.

20                   **SIXTH AFFIRMATIVE DEFENSE**

21                   The plaintiff and its insured failed and neglected to use reasonable care to minimize and  
22 mitigate the losses, injuries and damages complained of, if any there are.

23                   **SEVENTH AFFIRMATIVE DEFENSE**

24                   Should the plaintiff recover damages from RDS, RDS is entitled to indemnification, either  
25 in whole or in part, from all persons or entities whose negligence and/or fault proximately  
26 contributed to the damages alleged in the Second Amended Complaint, if any there are.

27                   **EIGHTH AFFIRMATIVE DEFENSE**

28                   RDS did not owe a duty to the plaintiff or its insured with regard to the allegations in the

1 Second Amended Complaint, and that the plaintiff, therefore, is barred from recovering from  
 2 RDS.

### **NINTH AFFIRMATIVE DEFENSE**

4 The Second Amended Complaint, and each cause of action therein is barred and fails to  
 5 state a cause of action against RDS in that the plaintiff and its insured failed to give timely and  
 6 proper notice.

### **TENTH AFFIRMATIVE DEFENSE**

8 The plaintiff or its insured are at fault in and about the matters referred to in the Second  
 9 Amended Complaint, and such fault on its part proximately caused and contributed to the damages  
 10 complained of, if any. RDS further alleges that any fault not attributable to the plaintiff or its  
 11 insured is the result of fault on the part of persons and entities other than RDS. This fault bars and  
 12 proportionately reduces any recovery by the plaintiff against RDS.

### **ELEVENTH AFFIRMATIVE DEFENSE**

14 The injuries/damages sustained by the plaintiff, if any, were either wholly or in part  
 15 negligently caused by persons, firms, corporations or entities other than RDS, and said negligence  
 16 is either imputed to plaintiff or its insured by reason of the relationship of said parties to the  
 17 plaintiff or its insured and/or said negligence comparatively reduces the percentage of negligence,  
 18 if any, by RDS.

### **TWELTH AFFIRMATIVE DEFENSE**

20 The Second Amended Complaint, and each cause of action therein was not filed with  
 21 reasonable cause, and in the good faith belief that there was a justifiable controversy under the  
 22 facts and laws, which warranted the filing of the Second Amended Complaint.

### **THIRTEENTH AFFIRMATIVE DEFENSE**

24 Co-defendants, and each of them, named and unnamed in the Second Amended Complaint,  
 25 were guilty of negligence or other acts or omissions in the matters set forth in the Second  
 26 Amended Complaint, which proximately caused or contributed to the damages or loss complained  
 27 of, if any, and that the Court is requested to determine and allocate the percentage of fault  
 28 attributable to each of the co-defendants.

## **RESERVATION OF RIGHTS**

RDS asserts that the Second Amended Complaint, and each cause of action therein, is stated in conclusory terms, and therefore RDS cannot fully anticipate all defenses that may be applicable to this action. Accordingly, RDS hereby reserves their right to add additional defenses, if any, to the extent such defenses are applicable to this action.

## PRAYER

WHEREFORE, RDS requests judgment as follows:

- 8       1. That the plaintiff take nothing by reason of its Second Amended Complaint;

9       2. That the Second Amended Complaint be dismissed with prejudice;

10      3. For costs of suit incurred herein; and

11      4. For such other and further relief as the Court may deem just and proper.

## **DEMAND FOR JURY TRIAL**

RDS requests a trial by jury on all aspects of this case so triable.

DATED: February 10, 2011

*/s/ Josh A. Cohen*

MARTÍN A. SABELLI

JOSH A. COHEN

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